

**Notice of Allowability**

Application No.

10/618,604

Examiner

Sung H. Pak

Applicant(s)

SCARTH ET AL.

Art Unit

2874

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Terminal disclaimer and Amendment filed 2/22/2006.
2. ☒ The allowed claim(s) is/are 1 and 3-15.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Victoria Donnelly on 4/18/2006.

The application has been amended as follows:

Claim 1 line 5, delete the recitation "if the monitored optical signal power is below a loss of signal (LOS) power threshold,"

Claim 9 line 6, delete the recitation "if the monitored optical signal power is below a loss of signal (LOS) power threshold,"

The claim amendment is necessary to clarify the claim language and more distinctly claim the allowable subject matter.

The following is an examiner's statement of reasons for allowance:

Electronic variable optical attenuators are known in the optical communications device art. Various methods of operating electronic variable optical attenuators are also known in the

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art. Such methods often involve steps of monitoring transmitted optical signal power and dynamically adjusting the attenuation level of the electronic variable optical attenuator.

**Xiao et al. (US 2004/0165857 A1)** discloses such methods. Specifically, Xiao discloses a method of demultiplexing multiplexed optical signals and controlling the gain level of each optical channel via electronic variable optical attenuator such that the attenuation level of each optical attenuator is dynamically changed in real-time to achieve gain equalization. Xiao does NOT teach a method of adjusting the optical signal power by setting the attenuation level of the electronic optical attenuator to a substantially maximum attenuation level, and subsequently modulating the attenuation by first decreasing and then increasing the attenuation level in steps until the optical signal power is detected above the loss of power threshold, or the maximum attenuation level is reached by the attenuator, as claimed in the instant application.

**Ko et al. (US 6,600,594 B1)** discloses a prior art method of calibrating electronic optical attenuator by first setting the attenuation level of each electronic optical attenuator to zero (minimum level) and then increasing the attenuation level in incremental steps until the calibration is completed and each electronic optical attenuators provide desired attenuation level. Such prior art method is dramatically different from the claimed invention and there is no motivation for modifying the device and method of Ko et al. to have features of the instant claimed features.

Finally, while **Iwata et al. (US 2004/0247326 A1)** does disclose a method of controlling the attenuation level of an electronic optical attenuator by first setting the attenuation level to maximum and then gradually decreasing the attenuation level until a desired optical signal power is reached (see Fig. 11). However, Iwata et al. is **NOT a prior art** because its effective filing

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date is May 19, 2004 which is **later** than the effective filing date of the present application, which is Jan. 22, 2003.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sung H. Pak whose telephone number is (571) 272-2353. The examiner can normally be reached on Monday- Friday, 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rodney Bovernick can be reached on (571)272-2344. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sung H. Pak  
Primary Patent Examiner  
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